

No. 1-13-2049

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 333
	)	
JERMAINE HUDSON,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HYMAN delivered the judgment of the court.  
Justices Lavin and Mason concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Judgment entered on defendant's conviction for delivery of a controlled substance within 1,000 feet of a school affirmed over contention that 10-year sentence was excessive; \$250 DNA ID System fee vacated.

¶ 2 Following a jury trial, defendant Jermaine Hudson was convicted of delivery of a controlled substance within 1,000 feet of a school and sentenced as a Class X offender to 10 years' imprisonment. On appeal, Hudson does not challenge his conviction, but rather attacks his sentence as excessive. He also asks us to vacate the \$250 DNA ID System fee as having been erroneously assessed. Based on the record before us, we cannot say that the sentence imposed by

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the court is excessive, manifestly disproportionate to the nature of the offense, or that it departs significantly from the intent and purpose of the law. As for the DNA fee, the State agrees, and so do we, that it be vacated.

¶ 3 Background

¶ 4 Because Hudson does not challenge the sufficiency of the evidence to sustain his conviction, we need not discuss in detail the evidence presented at trial. That said, Hudson was convicted on evidence showing that during a mid-day narcotics investigation on September 15, 2011, Hudson shouted and waved across Howard Street to undercover Chicago police officer Marco Mar who was looking to purchase drugs. Officer Mar raised his hand and held up four fingers to indicate that he wanted to purchase four bags of rock cocaine. The officer crossed the street, Hudson asked him what he wanted, and he replied "four rocks." The two then walked around the corner together to Marshfield Avenue, and Hudson crossed the street and spoke with Jevon O'Brien in front of a school. O'Brien spat some small items out of his mouth and into his hand, gave those items to Hudson, and Hudson returned across the street and handed the items to Officer Mar in exchange for \$40. The items consisted of four small plastic bags, each containing a white, rock-like substance. Officer Mar walked away, and Hudson walked into a park with O'Brien. The jury heard both Video and audio recordings of the transaction.

¶ 5 The parties stipulated that 718 feet separated the school and the point of the drug transaction, and that one of the four items Hudson gave to Officer Mar tested positive for 0.1 gram of cocaine. Hudson testified that he had been a drug addict for 20 years and was high at the time of the transaction with Mar. When asked by defense counsel if he sold anyone drugs that day, he replied "[y]es, I did," but did not recall what kind.

¶ 6 At sentencing, the State detailed defendant's lengthy criminal history, which included nine prior felony convictions, asserted that he was subject to mandatory sentencing as a Class X offender, and requested a substantial term of imprisonment. Defense counsel asserted that there was a direct correlation between defendant's loss of his parents and his involvement with drugs and crime. Counsel argued that Hudson was a drug user, not a seller, and that the crimes he committed, such as retail theft, were related to his drug use. Counsel also argued that Hudson had skills which made him a productive member of society who would be able to work in the future, and pointed out that he had been involved in the community and performed volunteer work for then-alderman Danny Davis. Counsel asked the court to recognize defendant's drug problem and impose a minimal sentence.

¶ 7 In allocution, Hudson explained that he had been a drug addict for the past 20 years, that he was never a drug dealer, and that he committed multiple retail thefts to support his drug habit. Hudson stated that he had stopped using drugs, but began again when his nephew died. He also stated that he planned to live a productive life with his wife and children, and asked the court for mercy.

¶ 8 The trial court stated that it had read the presentence investigation report (PSI) and considered all of the statutory factors in aggravation and mitigation, as well as defendant's statement in allocution, but noted that he had "a very extensive criminal history" which included nine prior felony convictions. The court acknowledged defendant's claim that he was not a violent person, but pointed out that he had a prior felony conviction for aggravated discharge of a firearm, and misdemeanor convictions for battery and obstruction of justice. It further noted that he had been given opportunities to receive treatment during probation and get help to continue

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being a productive member of society, but was discharged from the TASC (Treatment Alternatives for Safe Communities) program. The court then sentenced Hudson as a Class X offender to 10 years' imprisonment and assessed him \$1,874 in fines, fees, and costs, including \$250 for the DNA ID System fee. Hudson filed an immediate motion to reconsider sentence which the trial court denied, stating that it took "everything into consideration" in determining an appropriate sentence, which was "more than reasonable."

¶ 9 Analysis

¶ 10 On appeal, Hudson contends that his 10-year sentence is excessive because the offense was non-violent and involved an extremely minuscule amount of cocaine. He maintains that he is merely a long-time drug addict, not a drug dealer, and argues that the circumstances of this offense are not so egregious where his conduct was induced by police for the purpose of making arrests. Hudson acknowledges that he is subject to mandatory Class X sentencing due to his lengthy criminal history, but argues that the minimum term of six years' imprisonment would have been appropriate where he was never sentenced to a term longer than three years, and he demonstrated his significant potential for rehabilitation.

¶ 11 The State initially asserts that defendant's claim that his conduct was induced by police is forfeited because he did not specifically raise that ground in his motion to reconsider sentence. Alternatively, the State argues that the claim is belied by the record which shows that Hudson asked Officer Mar what he wanted. The State further responds that the sentence is not excessive where within the statutory range for Class X offenders, and where the trial court gave proper consideration to the nature and circumstances of the offense and defendant's potential for rehabilitation.

¶ 12 Hudson replies that he sufficiently preserved his claim in his post-sentencing motion by asserting that his sentence was excessive in view of his background and "the nature of his participation in the offense." Although Hudson did not specifically delineate in his motion the claim that his conduct was induced by police, he sufficiently apprised the court of his objection to his sentence, and we find his claim is not forfeited. *People v. Latto*, 304 Ill. App. 3d 791, 804 (1999).

¶ 13 Initially, we note that as a Class X offender, defendant is subject to a statutory sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-95(b) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). The trial court has broad discretion in imposing an appropriate sentence, and a sentence falling within the statutory range will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 14 We find that Hudson's sentence was not excessive and that the trial court did not abuse its discretion when it imposed the 10-year term. The record shows that the trial court expressly stated that it considered all of the statutory factors in aggravation and mitigation, the information contained in defendant's PSI, and defendant's statement in allocution. In response to defendant's claim that he wanted to live a productive life, the court noted that he had been provided opportunities to receive treatment during probation, but was discharged from the TASC treatment program. The record further reveals that the trial court gave significant consideration to defendant's "very extensive criminal history" comprised of nine prior felony convictions, including a conviction for the violent offense of aggravated discharge of a firearm, and

misdemeanor convictions of battery and obstruction of justice. The court's comments reflect its serious consideration of the appropriate sentencing factors, and conclusion that defendant's lengthy criminal history and unsuccessful attempts at treatment demonstrate a minimal chance of rehabilitation. *People v. Robinson*, 163 Ill. App. 3d 384, 398 (1987), quoting *People v. Shumate*, 94 Ill. App. 3d 478, 485 (1981).

¶ 15 Hudson's further claim that police induced his conduct for the purpose of making arrests also fails to advance his argument of an excessive sentence. The record shows that as Officer Mar walked down the street looking to buy drugs, Hudson shouted and waved to him from across the street, then asked the officer what he wanted. The record rebuts Hudson's assertion, and the trial court was not required to consider it as a mitigating factor.

¶ 16 Under this record, we cannot say that the sentence is excessive, manifestly disproportionate to the nature of the offense, or departs significantly from the intent and purpose of the law. *People v. Fern*, 189 Ill. 2d 48, 56 (1999). Accordingly, we affirm the 10-year term imposed by the trial court.

¶ 17 Regarding the \$250 DNA ID System fee under section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2010)), Hudson contends, and the State agrees, that Hudson already had been assessed the fee on a prior occasion and submitted a DNA sample in November 2003 while imprisoned for a prior conviction. *People v. Marshall*, 242 Ill. 2d 285 (2011). We concur and vacate the \$250 DNA fee from the Fines, Fees and Costs order.

¶ 18 We vacate the \$250 DNA ID System fee from the Fines, Fees, and Costs order and affirm defendant's conviction and sentence in all other respects.

¶ 19 Affirmed as modified.